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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTINA MOSCHELLA

Appeal 2007-3089
Application 10/775,954
Technology Center 3600

Decided: August 19, 2008

Before WILLIAM F. PATE, III, MURRIEL E. CRAWFORD, and DAVID
B. WALKER, *Administrative Patent Judges*.

WALKER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1, 7-11, and 17-28. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We affirm.

Appellant claims a shade for covering up information displayed on a computer or video display screen. (Specification 1:[0001]). Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A privacy shade to conceal information displayed on a screen of a computer monitor, comprising
a piece of lightweight, flexible material of a shape and size to cover the viewing area of the screen and provide concealment of the information displayed on the screen when said material is in a down position,
wherein said material is attached to a top portion of the computer monitor by a hook and loop fastener such that said material covers the front of the screen when said material is in the down position.

THE REJECTION

The Examiner relies upon the following as evidence in support of the rejection:

Coons	US 6,188,450 B1	Feb. 13, 2001
Salansky	US 5,499,793	Mar. 19, 1996

Claims 1, 7-11, and 17-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Coons in view of Salansky.

ISSUE

The issue before us is whether the Examiner erred in rejecting claims 1, 7-11, and 17-28 under 35 U.S.C. § 103(a) as being unpatentable over Coons in view of Salansky. The dispositive issues are whether the

references are properly combined and whether the combination teaches each of the disputed claim limitations.

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

FINDINGS OF FACT

We find the following enumerated findings to be supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Coons teaches a computer CRT cover that provides a shield piece that can quickly be placed over the monitor screen to block viewing of the matter being displayed on the monitor (Coons, abstract).
2. The shield screen 21 can be flipped up to rest on top of monitor 11 when the user wishes to view CRT screen 12, as shown in Figure 1. When the computer is off, or when the user wishes to block the view of CRT screen 12, screen shield 21 can be flipped down or rolled down to block the view of screen 12, as shown in Figure 3 (Coons, col. 4, ll. 25-35, Figures 1 and 3).
3. The shield screen is described as an alternate method of joining together side covers 16a, 16b at their top-front corners (Coons, col. 4,

- ll. 25-30, Figures 1 and 2). Coons does not explicitly describe attachment of the shield screen directly to the monitor.
4. Coons teaches the use of Velcro to secure a text holder 26 and holders 22 to side flap 18a, 18b and side cover 16a, 16b. Coons further discloses that one of skill in the art will appreciate that other forms of removable fasteners can be utilized with side flap 18a, 18b and cover side 16a, 16b (Coons, col. 4, ll. 7-12 and 20-24).
 5. Salansky teaches means for securing a document and/or the video monitor screen from undesired view (Salansky, col. 1, ll. 8-10 and 64-67).
 6. The retractable cover assembly of Salansky generally comprises a flexible cover that is attached at one end to a hollow cylindrical member, axle, and axle mount extension and at the other end comprises hook and loop attachment means with mating hook and loop attachment means attached to the top of the monitor (Salansky, col. 4, l. 64 – col. 5, l. 2, Figures 1 and 2).
 7. The two portions of the hook and loop fasteners shown in Salansky are shown attached, respectively, to the center of a top portion of the monitor and a corresponding center of a top portion of an edge of the flexible cover (Salansky, Figure 1).

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of ordinary skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 1739, and reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 1740. The operative question is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

ANALYSIS

The Appellant argues claims 1, 7-11, 17-20, and 25-28 as a group. We treat claim 1 as representative.

The Appellant argues that Salansky provides no motivation to attach the screen shield of Coons to the top portion of a monitor with a hook and loop fastener as suggested by the Examiner (Br. 5, 11). The Appellant argues that the Examiner employs impermissible hindsight (Br. 11). We do not find these arguments persuasive, particularly considering that Salansky specifically teaches a retractable cover assembly that is attached by hook and loop fasteners to the top of the monitor (Findings of Fact 5-7), and both Coons and Salansky disclose means to block viewing of the matter being displayed on a computer monitor (Findings of Fact 1 and 5).

The Appellant further argues that Coons does not teach attaching the privacy shade to the top of the monitor, but rather securing the screen shield to the top front corners of side covers 16a, 16b, which are, in turn, secured in place on the sides of the monitor by use of securing straps 28 and/or held in place by the addition of screen frame piece 27, which is shown in Figure 1 as disposed on the front of the monitor (Br. 9-10). The Appellant appears to be arguing the references separately and not addressing the combination asserted by the Examiner. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). In fact, the Examiner relies on Salansky for the attachment of the screen shield to the top of the monitor using hook and loop fasteners (Answer 3-5). We find that Salansky teaches the attachment of a

flexible cover to the top of a computer monitor using hook and loop fasteners (Finding of Fact 6).

One of ordinary skill in the art would have been able to modify Coons to attach the screen shield to the top of the monitor using hook and loop fasteners as taught by Salansky using methods known in the art at the time the invention was made. Moreover, each of the elements of Coons and Salansky combined by the Examiner performs the same function when combined as it does in the prior art. Thus, such a combination would have yielded predictable results. *See Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976).

Claim 1 therefore is a combination which only unites old elements with no change in their respective functions and which yields predictable results. Therefore, the claimed subject matter likely would have been obvious under *KSR*. In addition, the hook and loop fasteners of Salansky have been used to improve the operation of the retractable cover assembly disclosed therein. The Appellant has provided no persuasive evidence that using the hook and loop fasteners of Salansky with the screen shield of Coons is beyond the skill of one of ordinary skill in the art. Under those circumstances, the Examiner did not err in holding that it would have been obvious to one of skill in the art to apply the hook and loop fasteners of Salansky to the screen shield of Coons in view of the teachings of Salansky (Answer 3).

The Appellant therefore has not shown error in the Examiner's rejection of claim 1. Claims 7-11, 17-20, and 25-28 are not argued separately and, thus fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007). *See also In re Young*, 927 F.2d 588, 590 (Fed. Cir. 1991).

The Appellant argues claims 21-24 as a group. We treat claim 21 as representative. Claim 21 adds a limitation specifying that one portion of the hook and loop fastener is placed on the center of said top portion of said computer monitor and the other portion is placed on the center of a top portion of said material. Appellant argues that neither reference provides any motivation or suggestion for attaching a lightweight, flexible material directly to a top portion of a computer monitor or display device in the required locations (Br. 16). We disagree. Salansky does teach attaching flexible material to the top of a computer monitor using hook and loop fasteners (Finding of Fact 6). The Examiner found that Salansky discloses the use of hook and loop fasteners or adhesive for attaching computer accessories to the computer monitor and, in view of that teaching, it would have been obvious to use such fasteners to attach the cover of Coons to the monitor, either directly or through further attachment to covers 16a, 16b (Answer 3). We agree.

Both Coons and Salansky are directed to solving the same problem—to block viewing of the matter being displayed on the monitor—and, as discussed above, it would be obvious to one of skill in the art to modify the screen shield of Coons to attach it directly to the monitor using hook and loop fasteners as in Salansky. As for the specific locations claimed in claim 21, the two portions of the hook and loop fastener shown in Salansky are shown attached, respectively, to the center of a top portion of the monitor and a corresponding center of a top portion of an edge of the flexible cover (Finding of Fact 7).

The Appellant therefore has not shown error in the Examiner's rejection of claim 21. Claims 22-24 are not argued separately and, thus fall

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with claim 21. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007). *See also* *Young*, 927 F.2d at 590.

CONCLUSIONS

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 1, 7-11, and 17-28 under 35 U.S.C. § 103(a) as being unpatentable over Coons in view of Salansky.

DECISION

The decision of the Examiner to reject claims 1, 7-11, and 17-28 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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